

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TAMMY J. KITZMILLER, et al.	§	
	§	
Plaintiffs,	§	Civil Action No. 4:04-CV-2688
	§	(M.D. Pa.)
vs.	§	
	§	Hon. John E. Jones III
DOVER AREA SCHOOL	§	
DISTRICT and DOVER AREA	§	
SCHOOL DISTRICT BOARD	§	
OF DIRECTORS,	§	<b>Non-Party Foundation for</b>
	§	<b>Thought and Ethics'</b>
Defendants,	§	<b>Motion for Protective Order</b>
	§	

TO THE HONORABLE COURT:

Pursuant to Federal Rule of Civil Procedure 26, Non-Party Foundation for Thought and Ethics ("FTE") moves for a protective order prohibiting disclosure of its unpublished draft text of *The Design of Life: Discovering Signs of Intelligence in Biological Systems* (hereinafter "*The Design of Life*") from Defendants, Defendants' expert, William A. Dembski, or any other person or entity, to Plaintiffs, their counsel or experts. In support thereof, FTE would respectfully show the Court as follows:

1. By a requested dated April 8, 2005, Plaintiffs seek from Defendants and their expert, William A. Dembski, the unpublished draft text of *The Design of Life*. FTE is the publisher of *The Design of Life* and owns its intellectual property rights. FTE contracted with William A. Dembski as work for hire to author and

serve as an editor of this new book.

2. FTE seeks a protective order prohibiting disclosure of *The Design of Life* because: (a) Plaintiffs seek disclosure of FTE's trade secrets, confidential and proprietary information, (b) disclosure of this unpublished draft text would invade FTE's constitutional rights of freedom of speech, academic freedom and freedom of association, and (c), as set forth in Defendants' Motion for A Protective Order and Defendants' Memorandum of Law In Support of Motion for A Protective Order, Plaintiffs request information not relevant nor reasonably calculated to lead to the discovery of admissible evidence in this matter.

3. In support of this motion, Non-Party FTE relies upon its memorandum and exhibits attached thereto filed concurrently with this motion.

4. Counsel for FTE has conferred with counsel for Plaintiffs regarding the relief requested by this motion. Agreement could not be reached. Therefore, this motion is submitted to the Court for its determination.

WHEREFORE, Non-Party Foundation for Thought and Ethics respectfully requests that the Court enter a protective in accordance with Federal Rules of Civil Procedure 26(c) and grant FTE such other and further relief to which it is justly entitled.

Respectfully submitted,

By: s/Leonard G. Brown, III  
**Leonard G. Brown, III, Esquire**  
PA I.D. No. 83207  
**Dennis E. Boyle, Esquire**  
PA I.D. No. 49618  
*CLYMER & MUSSER, P.C.*  
23 North Lime Street  
Lancaster, PA 17602-2912  
(717) 299-7101

**Jeffrey C. Mateer**  
Texas State Bar No. 13185320  
**Mateer & Shaffer, L.L.P.**  
1300 Republic Center  
325 N. St. Paul Street  
Dallas, Texas 75202  
Telephone: (214) 720-9900  
Facsimile: (214) 720-9910

*Attorneys for Non-Parties  
Foundation for Thought and Ethics  
and Jon A. Buell*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above document was served electronically on the below listed individuals by electronic filing using the ECF system for the United States District Court, Middle District of Pennsylvania, and is available for viewing on its website.

Eric Rothschild  
Alfred H. Wilcox  
Pepper Hamilton, LLP  
3000 Two Logan Square  
18<sup>th</sup> and Arch Streets  
Philadelphia, Pennsylvania 19103

Patrick Gillen  
Thomas More Law Center  
24 Frank Lloyd Wright Drive  
P.O. Box 93  
Ann Arbor, Michigan 48106

By: s/Leonard G. Brown, III  
Leonard G. Brown, III, Esquire

Date: May 10, 2005